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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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REVERGE ANSELMO and SEVEN
HILLS LAND AND CATTLE COMPANY,
LLC,

NO. CIV. 2:12-1422 WBS EFB

Plaintiffs,

ORDER

v.

RUSS MULL, LESLIE MORGAN, a
Shasta County Assessor-
Recorder, COUNTY OF SHASTA,
BOARD OF SUPERVISORS OF THE
COUNTY OF SHASTA, LES BAUGH
and GLEN HAWES,

Defendants.

COUNTY OF SHASTA, AND COUNTY
OF SHASTA, for the People of
the State of California,

Cross-Complainant,

v.

REVERGE ANSELMO; SEVEN HILLS
LAND AND CATTLE COMPANY LLC;
NANCY HALEY; MATTHEW RABE;
MATTHEW KELLEY; ANDREW JENSEN;
and ROES 1 THRU 50,

1 Cross-Defendants.
2 _____/

3 REVERGE ANSELMO; SEVEN HILLS
4 LAND AND CATTLE COMPANY LLC;

5 Counter-Claimants,

6 v.

7 COUNTY OF SHASTA, and COUNTY
8 OF SHASTA, for the People of
9 the State of California,

10 Counter-Defendants.
11 _____/

12 COUNTY OF SHASTA, and COUNTY
13 OF SHASTA, for the People of
14 the State of California,

15 Counter-Claimants,

16 v.

17 REVERGE ANSELMO; SEVEN HILLS
18 LAND AND CATTLE COMPANY LLC;

19 Counter-Defendants.
20 _____/

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22 This action was removed from Shasta County Superior
23 Court on May 25, 2012 and included, in plaintiffs' Third Amended
24 Complaint ("TAC"), claims under 42 U.S.C. § 1983 based on
25 defendants' allegedly wrongful interference with plaintiffs' use
26 of their land. (Notice of Removal, Ex. B (Docket No. 1-2).)¹

27 _____
28 ¹ The removed action also included Shasta County's First
Amended Cross-Complaint ("FACC"), which brought crossclaims
against plaintiffs alleging public nuisance and violation of
California's Unfair Competition Law ("UCL"), California Business
and Professions Code §§ 17200, for a set of structures on
plaintiffs' property. (Notice of Removal, Ex. A (Docket No. 1-
1).)

The FACC also brought third-party claims seeking
contribution and indemnity from employees of the Army Corps of

1 On November 14, 2012, plaintiffs filed counterclaims
2 against Shasta County seeking declaratory relief regarding the
3 restaurant, winery, and land's compliance with various Shasta
4 County Codes and use permits, Shasta County's failure to provide
5 administrative hearings on permit applications under county and
6 state law, and plaintiffs' compliance with their Williamson Act
7 Contract. (Docket No. 99-1.) In response, Shasta County filed
8 another set of counterclaims against plaintiffs on December 5,
9 2012, alleging public nuisance and violations of California's
10 Unfair Competition Law ("UCL"), California Business and
11 Professions Code §§ 17200, for new buildings under construction.
12 (Docket No. 102.)

13 Courts have discretion to consider sua sponte whether
14 to continue exercising supplemental jurisdiction over state law
15 claims. See Acri v. Varian Assocs., Inc., 114 F.3d 999, 1003 n.3
16 (9th Cir. 1997) (en banc). Section 1367(c)(2) authorizes a
17 district court to decline to exercise supplemental jurisdiction
18 when state claims "substantially predominate[] over the claim or
19 claims over which the district court has original jurisdiction."
20 28 U.S.C. § 1367(c)(2).

21 Where "the state issues substantially predominate,
22 whether in terms of proof, of the scope of the issues raised, or
23

24 Engineers on plaintiffs' § 1983 claims, and the United States
25 removed the action from state court by certifying that the
26 employees were acting within the scope and course of their
27 employment under the Westfall Act, 28 U.S.C. § 2679. (Docket
28 Nos. 1 & 3.) The United States was substituted in place of the
Army Corps employees, (Docket No. 4), but the claims against the
United States were dismissed with prejudice on September 24,
2012, (Docket Nos. 58 & 95.)

1 of the comprehensiveness of the remedy sought, the state claims
2 may be dismissed without prejudice and left for resolution to
3 state tribunals." United Mine Workers of Am. v. Gibbs, 383 U.S.
4 715, 726 (1966). "Generally, a district court will find
5 substantial predomination 'where a state claim constitutes the
6 real body of a case, to which the federal claim is only an
7 appendage--only where permitting litigation of all claims in the
8 district court can accurately be described as allowing a federal
9 tail to wag what is in substance a state dog.'" De Asencio v.
10 Tyson Foods, Inc., 342 F.3d 301, 309 (3d Cir. 2003) (quoting
11 Borough of W. Mifflin v. Lancaster, 45 F.3d 780, 789 (3d Cir.
12 1995)).

13 "[T]he issue of whether pendent jurisdiction has been
14 properly assumed is one which remains open throughout the
15 litigation." Gibbs, 383 U.S. at 727. "Once it appears that a
16 state claim constitutes the real body of a case . . . the state
17 claim may fairly be dismissed." Id. "'District courts [should]
18 deal with cases involving pendent claims in the manner that best
19 serves the principles of economy, convenience, fairness, and
20 comity which underlie the pendant jurisdiction doctrine.'" City
21 of Chicago v. Int'l College of Surgeons, 522 U.S. 156, 172-73
22 (1997) (alteration in original) (quoting Carnegie-Mellon Univ. v.
23 Cohill, 484 U.S. 343, 357 (1988)). "A district court has
24 discretion to remand to state court a removed case involving
25 pendent claims upon a proper determination that retaining
26 jurisdiction over the case would be inappropriate." Carnegie-
27 Mellon, 484 U.S. at 357.

28 Here, the court has jurisdiction over this action under

1 § 1331 based on plaintiffs' § 1983 claims and has been exercising
2 supplement jurisdiction over the state law claims. It has become
3 apparent, however, that the increasing number and complexity of
4 state law claims are substantially predominating this case,
5 calling upon the court to construe various local and state
6 ordinances and procedures related to plaintiffs' property use.
7 The scope of the litigation has expanded considerably from the
8 determination of whether defendants' actions constituted
9 deprivations of the plaintiffs' First, Fifth, and Fourteenth
10 Amendment rights under § 1983. The parties now seek declaratory
11 judgment² on a variety of state law matters that are beyond the
12 scope of plaintiffs' original allegations and continue to bring
13 claims based on actions occurring after late 2008--the
14 approximate date of the final factual allegation in the TAC.
15 Plaintiffs' § 1983 claims, now lurking behind the expanding state
16 law issues, are merely the "federal tail [that] wag[s] what is in

20
21 ² The court does not exercise federal question
22 jurisdiction over the plaintiffs' counterclaims seeking
23 declaratory judgment under the Declaratory Judgment Act, 28
24 U.S.C. § 2201. (Docket No. 99-1.) In passing the Declaratory
25 Judgment Act, "Congress enlarged the range of remedies available
26 in federal courts but did not extend their jurisdiction." Skelly
Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950)
(quotation marks and citation omitted). "It is well settled that
Declaratory Judgment Act does not itself confer federal subject
matter jurisdiction, but merely provides an additional remedy in
cases where jurisdiction is otherwise established." Staacke v.
U.S. Sec'y of Labor, 841 F.2d 278, 280 (1988).

27 Here, the claims upon which plaintiffs seek declaratory
28 relief do not give rise to federal question jurisdiction, nor do
the parties contend that this case involves diversity
jurisdiction under 28 U.S.C. § 1332.

1 substance a state dog.”³ De Asencio, 342 F.3d at 309; accord W.
2 Coast, Inc. v. Snohomish Cnt’y, 33 F. Supp. 2d 924, 925 (W.D.
3 Wash. 1999).

4 Remanding the parties’ state law claims will serve the
5 principles of economy, convenience, fairness, and comity. The
6 court is spending an increasing amount of its scarce judicial
7 resources on plaintiffs’ state law claims, even as those claims
8 have an increasingly tenuous relationship with plaintiffs’ § 1983
9 claims over which the court is vested original jurisdiction. As
10 plaintiffs have persuasively argued, this court is now inundated
11 with purely state and local law issues that state courts
12 routinely and competently handle.

13 Other than dismissing contribution and indemnity claims
14 related to plaintiffs’ § 1983 claim, the court has yet to issue
15 any dispositive orders regarding the parties’ state law claims
16 and has denied a preliminary injunction as to those claims.
17 (Docket No. 96.) The court’s decision also does not conflict
18 with § 2679(d)(2)’s aim of “foreclos[ing] needless shuttling of
19 a case from one court to another.” Osborn v. Haley, 549 U.S.
20 225, 242 (2007) (quoting Gutierrez de Martinez v. Lamagno, 515
21 U.S. 417, 433 n.10 (1995)). By retaining jurisdiction over the §
22 1983 claims that formed the basis for the Westfall Act


23
24 ³ To the extent the parties’ state law claims share a
25 common nucleus of operative fact with Shasta County’s dismissed
26 third-party claims for indemnity and contribution which implicate
27 the Westfall Act, the court finds that the state law claims also
28 predominate over those third-party claims. See Osborn, 549 U.S.
at 245 (“Even if only state-law claims remained after resolution
of the federal question [of whether defendant has Westfall Act
immunity], the District Court would have discretion, consistent
with Article III, to retain jurisdiction.”)

1 certification of Army Corps employees for indemnity and
2 contribution, should any further disputes over Westfall Act
3 certification arise, the dispute will be handled in this court.

4 Accordingly, while the court continues to exercise
5 original jurisdiction over the plaintiffs' § 1983 claims in the
6 TAC, the court declines to exercise supplemental jurisdiction
7 over the parties' state law claims. The court, therefore, will
8 remand those claims to Shasta County Superior Court.⁴

9 IT IS THEREFORE ORDERED that the first and second
10 crossclaims brought by Shasta County in its First Amended Cross-
11 Complaint, (Docket No. 1-1), all counterclaims filed by
12 plaintiffs on November 14, 2012, (Docket No. 99), and all
13 counterclaims filed by Shasta County on December 5, 2012, (Docket
14 No. 102), be, and the same hereby are, REMANDED to the Superior
15 Court of the State of California in and for the County of
16 Shasta.⁵

17 DATED: March 15, 2013

18 
19 WILLIAM B. SHUBB
20 UNITED STATES DISTRICT JUDGE

21 _____
22 ⁴ The court recognizes that plaintiffs' counterclaims
23 filed on November 14, 2012, (Docket No. 99), and Shasta County's
24 counterclaims filed on December 5, 2012, (Docket No. 102), were
25 filed subsequent to the removal of the action. The court
26 nonetheless finds it appropriate to remand claims. See
Contemporary Servs. Corp. v. Hartman, Civ. No. 08-02967 AHM
(JWJx), 2008 WL 3049891, at *5 (S.D. Cal. Aug. 4, 2008)
(remanding state law counterclaims brought subsequent to removal
when declining supplemental jurisdiction under § 1367(c)(2)).

27 ⁵ Since the court declines to exercise supplemental
28 jurisdiction over the claims forming the basis of Shasta County's
motion for a preliminary injunction, (Docket No. 104), that
motion is denied without prejudice as moot.